

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	:	Case No. 12-58757
LARRY D. FERST,	:	Chapter 13
Debtor.	:	JUDGE PRESTON

DEBTOR'S MOTION TO AVOID JUDGMENT LIENS SECURED BY REAL ESTATE

Comes now Debtor pursuant to *Bankruptcy Rule 4003(b)*, and *11 U.S.C. 506(a)* and *(d)* in conjunction with *11 U.S.C. 1325*, and *11 U.S.C. 1327*, and hereby MOVES this Honorable Court for an order avoiding the non-consensual statutory judgment liens of the **STATE OF OHIO-DEPARTMENT OF TAXATION** ("ODOT").

The Debtor requests the Court to issue an order avoiding these liens as they are wholly unsecured based upon the lack of equity in the Debtor's residence. The factual and legal grounds supporting issuance of the order requested are more fully set forth in the accompanying Memorandum In Support, and the Exhibits attached hereto, which are herein incorporated by reference.

Respectfully submitted,

/s/ Christopher J. Spiroff
Christopher J. Spiroff (0042247)
1180 South High Street
Columbus, Ohio 43206
614.224.2104
Fax: 614.224.2066
admin@spirofflaw.com
Case Attorney for Debtor

MEMORANDUM IN SUPPORT

I. FACTS RELEVANT TO MOTION TO AVOID JUDGMENT LIEN

The Debtor is a joint tenant with the right of survivorship of the residence located at 5409 Riverport Drive, Columbus, OH 43221 "Exhibit A". As of the order of relief, Debtor's real estate had a fair market value of \$205,300.00. "Exhibit B". Thus, the value of Debtor's one-half interest was \$102,650.00.

The Debtor's residence is subject to an *ad valorem* tax lien in favor of the Franklin County, Ohio Treasurer in the amount of \$3,754.52. "Exhibit C". (Claim #2).

The Debtor's residence is subject to a consensual, first and best mortgage in favor of Household Realty Corporation in the amount of \$233,955.13. "Exhibit D". (Claim #5).

Finally, the Debtor's residence is subject to four (4) non-consensual, statutory tax liens in favor of ODOT. In aggregate, the face amount of these liens total \$15,775.48, and are detailed in attached "Exhibit E", and the appendices thereto. Debtor seeks an order avoiding and releasing these judgment liens as they are wholly unsecured by any equity in the Debtor's residence.¹

The mathematical calculation relevant to proving the wholly unsecured status of these liens is as follows:

Franklin County Treasurer Taxes:	(\$3,754.52)
1 st Mortgage to Household Realty Corporation:	(\$233,955.13)
	<hr/>
Subtotal:	(\$237,709.65)
	<hr/>
Debtor's ½ Interest in Realty:	\$102,650.00
 ATTACHABLE EQUITY:	 (\$135,059.65).

¹ While ODOT filed a proof of claim (Claim #8), it is unclear whether all pre-petition liability was included therein. Notwithstanding this fact, the subject liens need to be avoided to clear title to the Debtor's residence.

II. LEGAL AUTHORITY SUPPORTING AVOIDANCE OF JUDGMENT LIENS

The Debtor in this case is seeking to avoid four (4) non-consensual, statutory tax liens purportedly secured by the Debtor's primary residence. The Debtor asserts that these liens are not secured by any equity in the property, and are subject to avoidance on this basis. 11 U.S.C. 506(a) and (d), in conjunction with 11 U.S.C. 1325, and 11 U.S.C. 1327.

III. RELIEF REQUESTED

Based upon the foregoing, it is requested that the judgment liens of ODOT be found to be wholly unsecured by any equity in the Debtor's residence, and subject to avoidance.

Therefore, the Debtor respectfully requests this Honorable Court to issue an order avoiding and forthwith authorizing the release of the following non-consensual, statutory tax liens more particularly described as **06-JG-016034, 12-JG-022509, 12-JG-022510, and 12-JG-022511**, which are of record with the Clerk of Court, Franklin County, Ohio Court of Common Pleas; to issue an order avoiding these liens, and releasing and forthwith forever discharging the same of record, including all interest, penalties, costs, or any other charges related thereto; and that the Court grant the Debtor such other legal and equitable relief as this Court deems necessary and proper.

/s/ Christopher J. Spiroff

NOTICE OF FILING MOTION TO AVOID JUDGMENT LIENS

The Debtor has filed papers with this Court requesting that the statutory judgment liens of the STATE OF OHIO-DEPARTMENT OF TAXATION be avoided by the Court, and released of record. **Your rights may be affected. You should read these papers carefully, and discuss this issue with your attorney, if you have one in this case. (If you do not have counsel in this case, it is recommended that you consult one).**

If you do not want the Court to grant the Debtor the relief requested in this Motion, or if you want the Court to consider your views on this Motion, then on or within **twenty-one (21)** days of the date of this Notice, you or your lawyer must file a written response with the Bankruptcy Court explaining your position at:

Clerk of Courts
United States Bankruptcy Court
170 North High Street
Columbus, OH 43215.

If you mail the request to the Court, be sure to mail it early enough so the Court will **receive** it on or before the dated stated above. You must also mail a copy to:

Frank M. Pees
Standing Chapter 13 Trustee
130 E. Wilson Bridge Rd., #200
Worthington, OH 43085-6300

Christopher J. Spiroff, Esq.
1180 South High Street
Columbus, OH 43206

U.S. Trustee
170 N. High Street, #200
Columbus, OH 43215.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion, and may enter an Order granting that relief.

10/22/15

/s/ Christopher J. Spiroff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion was served either through electronic transmission, or by regular, first-class, U.S. Mail, postage pre-paid, upon the following parties in interest, on the date and as indicated below:

10/22/15

/s/ Christopher J. Spiroff

****served electronically through the Court's ECF System at the email address registered with the Court****

Frank M. Pees, Chapter 13 Trustee
U.S. Trustee
Brian M. Gianangeli, Esq.
LeAnn E. Covey, Esq.
Edward A. Bailey, Esq.
John L. Day, Jr., Esq.
Stephen Franks, Esq.

****served by regular, first class U.S. Mail****

Larry D. Ferst, 5409 Riverport Drive, Columbus, OH 43221

State of Ohio, Dept. of Taxation, Bankruptcy Division, P.O. Box 530, Columbus, OH 43216

State of Ohio-Taxation, c/o Ohio Attorney General, Collections Division, 150 E. Gay St., 21st Floor, Columbus, OH 43215

Ohio Dept. of Taxation, c/o Rebecca Daum, Esq., P.O. Box 350, Columbus, OH 43216

Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, OH 43215

28173A15

220778

RECORDED FRANKLIN CO., OHIO

3 5 2 P.M.

DEC 23 1994

A

SURVIVORSHIP DEED*

RICHARD B. METCALF, RECORDER

RECORDER'S FEE \$ 14.00

M/I Schottenstein Homes, Inc. an Ohio Corporation, dba M/I Homes, and having a principal place of business in the City of Columbus, County of Franklin, State of Ohio, for valuable consideration paid grants with general warranty covenants to

Larry D. Ferst and Felicia A. Ferst, husband and wife,

for their joint lives, remainder to the survivor of them whose tax mailing address is 5409 Riverport Drive, Columbus, Ohio 43221 the following **REAL PROPERTY** situated in the County of Franklin, State of Ohio and in the City of Columbus, and being more particularly bounded and described as follows:

Being Lot No. Fifty-Two (52), of AMENDED PLAT OF RIVERSIDE FOREST SECTION 2 (amending Riverside Forest Section 2, of record in Plat Book 79, Pages 51 and 52), as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 79, Page 83 and 84, Recorder's Office, Franklin County, Ohio.

Parcel #560-227050

This conveyance is subject to: 1) real estates taxes and assessments, if any, not due and payable as of the date hereof, 2) restrictions, easements, conditions and reservations of record, and 3) zoning ordinances.

Prior Instrument Reference: Official Records Volume: 26778 Page: F16 & F17

IN WITNESS WHEREOF, M/I Schottenstein Homes, Inc. has caused its corporate name to be subscribed by its duly authorized officer this 21st day of December, 1994.

Signed and acknowledged in the presence of

M/I SCHOTTENSTEIN HOMES, INC.

Trina M. Mathews
TRINA M. MATHEWS

Cheryl Medley
CHERYL MEDLEY

Lloyd T. Simpson
Vice President/Division Manager

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

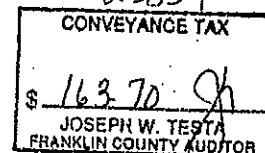
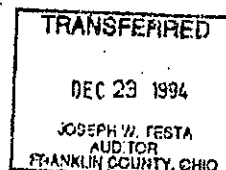
The foregoing instrument was acknowledged before me this 21st day of December, 1994 by Lloyd T. Simpson, Vice President and Columbus Division Manager of M/I Schottenstein Homes, Inc., an Ohio Corporation, for and on behalf of the corporation.

Trina M. Mathews
Notary Public

This Instrument Prepared by:
M/I Schottenstein Homes, Inc.
1855 East Dublin-Granville Road, Columbus, Ohio 43229
*See Section 5302.17 of the Ohio Revised Code



TRINA M. MATHEWS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MAY 25, 1997



B

REAL ESTATE VALUE ESTIMATE

SUBJECT	Contact LARRY D FERST		Census Tract 0079.51		Map Reference N044NNA 05200																																																																																															
	Property Address 5409 Riverport Dr		Check one: <input checked="" type="checkbox"/> SF <input type="checkbox"/> PUD <input type="checkbox"/> CONDO <input type="checkbox"/> 2-4 Units																																																																																																	
	City Columbus		County FRANKLIN		State OH Zip Code 43221																																																																																															
	Phone No. Res. N/A		Loan Amount \$ N/A		Term N/A																																																																																															
FIELD REPORT	No. of Rooms 9	No. of Bedrooms 4	No. of Baths 2.5	Family room or den <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Gross Living Area 1,944 Sq. Ft.	Mos. Owner's Est. of Value \$ N/A																																																																																														
					Garage/Carport (specify type & no.) 2 CAR ATTCH	Porches, Patio or Pool (specify) STOOP																																																																																														
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	Built Up <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25% to 75% <input type="checkbox"/> Under 25%				General Appearance of Properties <input type="checkbox"/> Good <input checked="" type="checkbox"/> Avg <input type="checkbox"/> Fair <input type="checkbox"/> Poor																																																																																															
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S/Family Age 15 yrs. to 35 yrs. Predominant Age 22 yrs.																																																																																																				
Comments including those factors affecting marketability (e.g. public parks, schools, view, noise) HAYDEN RUN RD TO THE NORTH, DAVIDSON RD TO THE SOUTH, DUBLIN RD TO THE EAST, ROUTE 315 TO THE WEST. LOCATED IN RIVERSIDE FOREST SUBDIVISION AMONG PROPERTIES WITH A VARIETY OF STYLES, VALUES AND APPEALS. AVERAGE ACCESS TO MAJOR ROADWAYS. I-270 LESS THAN 10 MINUTES. HILLIARD CITY SCHOOLS. LOCAL SHOPPING, CHURCHES, PARKS & RECREATION.																																																																																																				
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Completed By JAMES SMOOT Title APPRAISER																																																																																																				
Signature <i>[Signature]</i> Date November 10, 2012																																																																																																				

[Y2K]

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF OHIO COLUMBUS DIVISION		PROOF OF CLAIM						
Name of Debtor: <div style="text-align: center;">Larry D. Ferst</div>		Case Number: <div style="text-align: center;">12-58757-CKP</div>						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		D						
Name of Creditor (the person or other entity to whom the debtor owes money or property): Household Realty Corporation		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ <i>(If Known)</i> Filed on _____						
Name and address where notices should be sent: Household Realty Corporation 2929 Walden Avenue Depew, New York 14043 Telephone Number: (800) 679-9896 email: _____								
Name and address where payment should be sent: (if different from above): Household Realty Corporation Bankruptcy Department P.O. Box 9068 Brandon, Florida 33509-9068 Telephone Number: (800) 679-9896 email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.						
1. Amount of Claim as of Date Case Filed: <u>\$233,955.13</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
2. Basis for Claim: <u>Money Loaned</u> (See instruction #2)								
3. Last four digits of any number by which the creditor identifies debtor: <u>XXXXXXXXXX</u>	3a. Debtor may have scheduled account as: <u>(See instruction #3a)</u>	3b. Uniform Claim Identifier (optional): <u>(See instruction #3b)</u>						
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien or property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of Property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: 5409 Riverport Dr, Columbus, Ohio 43221 Value of Property: _____ Annual Interest Rate: <u>5.0000%</u> <input checked="" type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: <div style="text-align: center;"><u>\$20,384.99</u></div> Basis for perfection: <u>Recordation of Lien</u> Amount of Secured Claim: <u>\$233,955.13</u> Amount of Unsecured: _____						
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check box specifying the priority and state the amount. <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a) (1)(B). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507(a)(4). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5). </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family or household use - 11 U.S.C. §507(a)(7). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a) (). </td> </tr> </table> <div style="text-align: right; margin-top: 10px;"> Amount entitled to priority: _____ </div>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a) (1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5).	<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family or household use - 11 U.S.C. §507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a) ().
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a) (1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5).						
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family or household use - 11 U.S.C. §507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a) ().						
<i>*Amounts are subject to adjustment on 04/01/2013 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>								
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								

EXHIBIT E

**SUMMARY OF JUDGMENT LIENS OF RECORD
IN FAVOR OF THE STATE OF OHIO-DEPARTMENT OF TAXATION**

<u>Date of Lien</u>	<u>Judgment Lien Number</u>	<u>Amount</u>
5/25/06	06-JG-016034	\$773.67
6/22/12	12-JG-022509	\$12,924.91
6/22/12	12-JG-022510	\$884.38
6/22/12	12-JG-022511	\$1,192.52
		<hr/>
AGGREGATE TOTAL OF TAX LIENS:		\$15,775.48

E1618 - E11

PRECIPE

DATE 05-25-12
COURT OF COMMON PLEAS OF FRANKLIN COUNTY

STATE OF OHIO
DEPARTMENT OF TAXATION

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURT
373 SOUTH HIGH STREET
COLUMBUS, OH 43215

PLAINTIFF

VS.

TAX TYPE: PERSONAL INCOME TAX

FERST, LARRY D & FELICIA A

5409 RIVERPORT DR

CRN: [REDACTED]

COLUMBUS, OH 43221

ACCOUNT NO [REDACTED]

DEFENDANT

12JG 06 2250.9

THE AFOREMENTIONED ASSESSMENT HAS BECOME FINAL BY OPERATION OF LAW FOR THE PURPOSES OF HAVING A JUDGMENT LIEN RECORDED THEREON

TO THE CLERK OF COMMON PLEAS COURT:

ENTER JUDGMENT AND RECORD
CERTIFICATE OF JUDGMENT. RETAIN
ONE COPY AND RETURN ONE COPY TO THE
OFFICE OF THE ATTORNEY GENERAL

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2012 JUN 22 AM 10:54
CLERK OF COURTS - CV

JUDGMENT RECORDED ON:

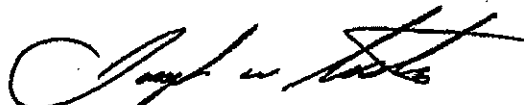
DATE: AMOUNT \$ 12,924.91

CASE NO.:

DOCKET:

PAGE:

I hereby certify the foregoing to
be a true and correct copy of the
action of the Tax Commissioner
taken this date with respect to
the above matter.



[REDACTED] . Testa
[REDACTED] Commissioner

* A 8 0 9 5 9 6 3 C 2 5 D 2 0 1 2 0 5 2 5 C *

E1618 - E12

PRECIPE

DATE 05-25-12
COURT OF COMMON PLEAS OF FRANKLIN COUNTY

STATE OF OHIO
DEPARTMENT OF TAXATION

MARYELLEN O'SHAUGHNESSY
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373 SOUTH HIGH STREET
COLUMBUS, OH 43215

PLAINTIFF

VS.

TAX TYPE: PERSONAL INCOME TAX

FERST, LARRY D & FELICIA A

5409 RIVERPORT DR CRN: 02200811344420

COLUMBUS, OH 43221

ACCOUNT NO [REDACTED]

DEFENDANT

12JG 06 225 1.0

THE AFOREMENTIONED ASSESSMENT HAS BECOME FINAL BY OPERATION OF LAW FOR THE PURPOSES OF HAVING A JUDGMENT LIEN RECORDED THEREON.

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JUDGMENT RECORDED ON:

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
JUN 22 AM 10:54
CLERK OF COURTS-CV

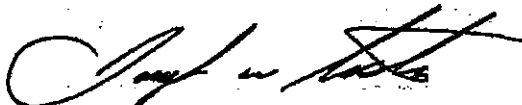
DATE: AMOUNT \$ 884.38

CASE NO.:

DOCKET:

PAGE:

I hereby certify the foregoing to
be a true and correct copy of the
action of the Tax Commissioner
taken this date with respect to
the above matter.



[REDACTED] . Testa
[REDACTED] Commissioner



E1618 - E13

PRECIPE

DATE 05-25-12
COURT OF COMMON PLEAS OF FRANKLIN COUNTY

STATE OF OHIO
DEPARTMENT OF TAXATION

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURT
373 SOUTH HIGH STREET
COLUMBUS, OH 43215

PLAINTIFF

VS.

FERST, LARRY D & FELICIA A

TAX TYPE: PERSONAL INCOME TAX

5409 RIVERPORT DR

CRN: [REDACTED]

COLUMBUS, OH 43221

ACCOUNT NO [REDACTED]

DEFENDANT

12JG 06 22511

THE AFOREMENTIONED ASSESSMENT HAS BECOME FINAL BY OPERATION
FOR THE PURPOSES OF HAVING A JUDGMENT LIEN RECORDED THEREON.

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JUDGMENT RECORDED ON:

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2012 JUN 22 AM 10:54
CLERK OF COURTS-CV

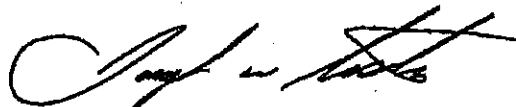
DATE: AMOUNT \$ 1,192.52

CASE NO.:

DOCKET:

PAGE:

I hereby certify the foregoing to
be a true and correct copy of the
action of the Tax Commissioner
taken this date with respect to
the above matter.



[REDACTED]
[REDACTED] . Testa
[REDACTED] Commissioner



* A 8 0 9 5 9 7 1 C 2 5 D 2 0 1 2 0 5 2 5 C *